

1 KEKER & VAN NEST LLP
ROBERT A. VAN NEST - # 84065
2 rvannest@kvn.com
CHRISTA M. ANDERSON - # 184325
3 canderson@kvn.com
DANIEL PURCELL - # 191424
4 dpurcell@kvn.com
633 Battery Street
5 San Francisco, CA 94111-1809
Telephone: (415) 391-5400
6 Facsimile: (415) 397-7188

7 KING & SPALDING LLP
BRUCE W. BABER (pro hac vice)
8 bbaber@kslaw.com
1185 Avenue of the Americas
9 New York, NY 10036
Telephone: (212) 556-2100
10 Facsimile: (212) 556-2222

11 Attorneys for Defendant
GOOGLE INC.

12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA
14 SAN FRANCISCO DIVISION

15 ORACLE AMERICA, INC.,
16 Plaintiffs,
17 v.
18 GOOGLE INC.,
19 Defendant.

Case No. 3:10-cv-03561 WHA

**DEFENDANT GOOGLE INC.'S NOTICE
OF MOTION AND MOTION TO
REMOVE FROM DOCKET
INCORRECTLY FILED ATTACHMENT 7
TO ECF 1571**

Dept. Courtroom 8, 19th Fl.
22 Judge: Hon. William Alsup

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DEFENDANT GOOGLE INC.'S NOTICE OF MOTION AND MOTION TO REMOVE FROM DOCKET
INCORRECTLY FILED ATTACHMENT TO ECF 1571

Case No. 3:10-cv-03561 WHA

NOTICE OF MOTION AND MOTION

PLEASE TAKE NOTICE that Defendant Google Inc. (“Google”) hereby moves the Court to remove incorrectly filed documents (consisting of Attachment 7 to Dkt. No. 1571) from the public docket to afford Plaintiff Oracle America, Inc. (“Oracle”) an opportunity to seek to justify its stated need to seek to seal this material.

On March 23, 2016, Google filed its motions *in limine* and *Daubert* motions, along with the Declaration of Edward Bayley containing exhibits in support of these motions. ECF No. 1571.¹ In accordance with the Stipulated Protective Order in this case, Google also filed a motion to file under seal various exhibits in support of these motions, including materials that Oracle had designated as Confidential or Highly Confidential-Attorneys Eyes Only (“HC-AEO”) under the Stipulated Protective Order. ECF No. 66. However, Google did not file under seal portions of those exhibits that it understood Oracle had de-designated as no longer HC-AEO under the Protective Order and that Oracle had not affirmatively designated as “Confidential” under the protective order. Karwande Declaration in Support of Motion to Remove Incorrect Filing (“Karwande Decl.”) ¶¶ 2-3. Among those de-designated materials was information contained in Exhibit F to the Declaration of Edward Bayley of in Support of Google’s Motions in Limine (“Bayley Decl.”), which is the Corrected Opening Report of Mr. James Malackowski and accompanying Exhibits. ECF No. 1571-7.

Specifically, on January 14, 2016, Oracle informed Google that it was removing the HC-AEO confidentiality designation affixed to that material with the exception of certain specifically designated materials. Karwande Decl., Ex. A [January 14, 2016 email from Jose Valdes re Oracle America, Inc. v. Google Inc. -Oracle's Expert Reports]. These designations were reflected in a redacted copy of the Malackowski Opening Report and Exhibits bearing the label “Oracle AEO Redacted.” Oracle sent these “Oracle AEO Redacted” expert reports to Google on January

¹ On March 23, 2016, Google erroneously filed slip sheets entitled “Unredacted Version of Document Sought to Be Sealed” as attachments to Edward Bayley’s Declaration in Support of Google’s Motion in Limine No. 4 to Exclude Market Harm Testimony from Expert Report of Dr. Adam Jaffe (*see* ECF No. 1564). On March 24, 2016, Google filed a corrected version of the Bayley Declaration and the redacted versions of Exhibits A-G as attachments (*see* ECF No. 1574).

1 14, 2016. Karwande Decl., ¶ 3, Ex. A. Google maintained the HC-AEO designation for these
 2 materials. Karwande Decl., ¶ 3. Google was guided by this de-designation (which was never
 3 overridden or re-designated in later correspondence) in determining what materials needed to be
 4 filed under seal in connection with March 23, 2016 motion *in limine* filing. Karwande Decl., ¶ 4.

5 Furthermore, and in an abundance of caution, counsel for Google sent a confirming email
 6 on the evening of filing these materials to counsel for Oracle setting out Google's understanding
 7 as to the de-designated status of those materials. Karwande Decl., ¶ 4, Ex. B [Bayley email to
 8 Counsel for Oracle dated 3/23/16].

9 It was not until March 26, 2016, days after filing of the motions *in limine* and *Daubert*
 10 motions, that Oracle informed Google that it believed Oracle had maintained confidentiality
 11 designations for certain portions of the publicly filed materials in Attachment 7 to ECF 1571 and
 12 claimed that Google had not complied with the Protective Order. Karwande Decl., ¶ 6, Ex. C
 13 [Uriarte/Karwande email exchange, dated 3/26/16 and 3/27/16]. Specifically, Oracle claims the
 14 following portions of Attachment 7 to ECF No. 1571 contain confidential Oracle financial
 15 information from 2014-2015: figure 24, figure 25, figure 27, figure 28, Exhibit 12, Exhibit 12.1,
 16 and Exhibit 12.2. *Id.* Google responded immediately, and explained to Oracle why the materials
 17 were properly filed in the public docket given Oracle's de-designations. *Id.* Google offered, as a
 18 courtesy, to jointly take any action to resolve this issue. In response to Google's explanation,
 19 Oracle then requested that Google file a corrected version of the document at issue and ask the
 20 Docket Clerk to remove the material from the public docket. *Id.* Then, this morning, on March 28,
 21 2016, Oracle requested that in addition, Google also file a motion to remove the original material
 22 from the public docket. Karwande Decl., ¶ 7.

23 As a courtesy, Google has taken all steps it could to immediately address Oracle's
 24 concerns, including calling ECF Help Desk and placing a lock on the document, sending an email
 25 to Judge Alsup's Docket Correction clerk, filing a version of Exhibit F that is redacted in
 26 accordance with Oracle's March 26, 2016 assertion of confidentiality (see ECF 1587), and filing
 27 this motion. Karwande Decl. ¶¶ 6-10. Accordingly, although Google maintains that its public
 28 filing of this de-designated material was proper, Google moves the Court requesting the removal

1 of material from the public docket to afford Oracle an opportunity to seek to seal this material.

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4 Dated: March 28, 2016

KEKER & VAN NEST LLP

5 By: /s/ Christa M. Anderson
6 CHRISTA M. ANDERSON

7 Attorneys for Defendant
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